

ACE PRIVATE RISK SERVICES

# MANAGING THE RISKS OF EMPLOYING DOMESTIC STAFF

HOW HIGH NET WORTH FAMILIES AND THEIR ADVISORS  
CAN ENSURE A SAFE AND WELL-RUN HOUSEHOLD



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# EXECUTIVE SUMMARY

October 2015

To make their busy lifestyles more manageable, families with substantial assets often employ domestic staff such as a nanny, housekeeper, driver, chef, or caretaker. Ironically, these families, who have achieved great success in their professional lives, often do not follow proper employment methods for staff helping in their personal lives. As a result, they expose themselves to liabilities in a variety of ways.

Families who employ domestic staff must comply with a complex set of federal and state labor law requirements or face penalties. They must consider that domestic employees may have unlimited access to their home, knowledge of their financial affairs, credit/debit card privileges, driving duties, and most importantly, unsupervised responsibility for the safety of children or elderly parents on a daily basis.

Over time, domestic staff can be perceived as members of the family. This level of trust can cause families to underestimate the possibility that a disgruntled or untrustworthy employee might file a lawsuit for discrimination, steal jewelry, or use sensitive personal information to acquire fraudulent loans. The Guidry Group, an international firm specializing in security for organizations and private individuals, reports finding a cause for concern in a third of the applicants for domestic positions it has investigated.

For these reasons, a thorough approach to hiring and managing domestic staff is essential, just as it is in the professional world. Key steps in the employment process include:

- **Build the right team:** Given the complexity of labor law and the potential liabilities of being an employer, families will likely need to consult with an attorney, accountant, insurance agent, background screening service, and employment agency. Specialized household risk management firms also can take on a variety of responsibilities for operating large households or providing human resources solutions for families and family offices.
- **Plan in advance:** A proper hiring process can take 120 days or more for long-term employees.
- **Have backgrounds professionally checked:** Families should not rely solely on personal recommendations or a cursory check

by an employment agency. Thorough checks including criminal records, often with an international reach, should be conducted on job finalists. Follow-up checks should be conducted every three to five years.

- **Put expectations in writing:** A signed employment agreement should include a clear job description, confidentiality expectations, and a process for evaluating performance as well as potential termination.
- **Get the proper insurance:** Families should carry workers compensation insurance to provide protection if the employee requires medical care, suffers lost wages, or needs vocational rehabilitation due to a job-related injury or illness. Employment practices liability insurance (EPLI) is necessary to guard against claims of discrimination and other wrongful employment acts. Homeowners, valuable collections, auto, and umbrella liability insurance policies also provide important protections. If the employee's duties will involve driving his or her own car, the family should make sure the employee carries adequate auto and umbrella liability coverage, as well.

Importantly, families should work with an agent who understands the differences between policies designed for high net worth (HNW) families and those designed for the average consumer. For instance, EPLI policies designed for HNW families typically include coverage for a public relations firm to protect their reputation if a plaintiff attorney decides to make allegations, like sexual harassment, public. In the best cases, the reputation damage coverage is part of the broader umbrella policy. Homeowners policies designed for HNW families usually include coverage for identity fraud and kidnap expenses, as well as much higher amounts of coverage for medical payments. Some HNW insurance companies also offer clients access to background screening services on a complimentary or reduced-fee basis.

By using business-like due diligence in the employment process and securing the correct types and amounts of insurance, HNW families can be confident that they have minimized the many risks that arise when inviting an employee into their personal lives.

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# PART I: THE RISKS PROLIFERATE

The relationship between HNW families and their household and property employees is unique, particularly when the staff lives at the home. Employees are cognizant of the families' most intimate moments, such as birthday parties and holiday celebrations. Nannies spend many hours alone with children; chauffeurs know daily traveling routines; and personal assistants account for every hour of the waking day.

These close encounters often encourage HNW families to perceive domestic staff as an extension of the family. While many families are quite comfortable with this arrangement, it can cause them to downplay the risks, which are complex, financially threatening, and even dangerous. Often working without a manager to document day-to-day activities, a disgruntled or untrustworthy employee can quickly become a serious liability.

Teresa Leigh, CEO of Teresa Leigh Household Risk Management, breaks the risks into three categories:

- Labor law and liability risk
- Identity and property theft
- Personal physical danger

## Labor Law and Liability Risk

The U.S. Department of Labor (DOL), Equal Employment Opportunities Commission (EEOC), and Fair Labor Standards Act (FLSA), each have a strict set of guidelines for the families employing domestic staff to follow. Each U.S. state also has its own labor department with guidelines to follow.

Failing to adhere to these guidelines can result in fines and liability lawsuits that are not only costly but also damaging to a family's reputation. Yet, with so many rules to follow, even the well-intentioned family can make mistakes.

## Employee or Independent Contractor

Improperly identifying a worker as an employee or independent contractor is one of the most basic and common errors a family can make. Indeed, many business and political leaders have run afoul of the law and attracted negative media coverage because they classified their domestic workers as independent contractors.

According to federal and state labor laws, employees generally are workers who are not in charge of establishing their own work schedules, who do not bring with them tools of the trade, and who are assigned daily tasks by their supervisor.

From a tax standpoint, Social Security tax must be paid and accounted for, and some states may require payment of other taxes

such as an unemployment tax or a disability insurance tax. The penalties for non-payment of Social Security and unemployment compensation taxes can be substantial.

Errors regarding overtime pay can also lead to costly penalties. Leigh provided the example of a HNW family that hired a nanny and paid the person \$400 per week by check. "Say the nanny worked 55 hours each week, but the family did not keep records of the actual hours worked or the pay history other than the check stubs," she said. "State and federal laws are clear that hourly employees must be paid for overtime work."

Overtime commonly is defined as any work performed by an employee beyond 40 hours per week, and is paid at 1.5 times the hourly rate in most jurisdictions. In some states like California, overtime is also construed as any work performed beyond eight hours per day. Leveraging the previous example of the nanny paid \$400 per week, Leigh noted that, based on overtime and penalties for violating state employment laws, the family would owe the nanny \$65,880 for a single year.



## Employee or Independent Contractor

Most domestic employees hired by HNW families are hourly employees for whom payroll taxes must be paid. Such employees must be provided a Form W-2, not a Form 1099 for independent contractors. Federal and state labor laws establish specific criteria that differentiate between employee or independent contractor status. The criteria hinge on the level of control the employer exerts over the worker.

Examples of the criteria for independent contractor status include:

- The worker sets his or her own hours.
- The worker uses his or her tools of the trade.
- The family assigns what tasks to complete but does not directly supervise how the tasks are performed.

A gardener who comes to the home as needed or on a flexible basis and brings his own tools would typically qualify as an independent contractor. On the other hand, if the family has direct control over the worker's schedule and number of hours worked, the individual typically would be considered an employee.

Since the difference between an employee and an independent contractor is an intricate matter, the Internal Revenue Service offers guidelines in IRS Publication 926 to help families make the proper differentiation. State law must also be evaluated.

That, however, is just the cost of one employee. "Most of the HNW households that I represent have an average of at least three employees, and if they were all hourly employees, the employer could owe almost \$200,000 in state fines and overtime for just a single year," Leigh said. "Multiply this by several years of work and the costs become staggering." Additional information about overtime and documentation requirements established by the FLSA can be found on the US Department of Labor website.<sup>1</sup>

## Undocumented Workers

In 1986, the federal government's Immigration Customs and Enforcement Act intensified the prosecution of existing immigration laws for hiring undocumented workers. To document employee eligibility, families must complete and retain Federal Form I-9 in case issues arise.

The penalties and fines for breaking the law can be stiff. Civil penalties may range from a minimum of \$375 per unauthorized worker for a first offense, up to a maximum of \$1,600 per worker for a third or subsequent offense. If a "pattern and practice" of hiring undocumented workers is found, the employer can be fined up to \$3,000 per employee and/or imprisoned for up to six months.<sup>2</sup>

John McDonough, vice chairman of the commercial litigation group at the New York-based law firm Cozen & O'Connor, pointed out other unexpected legal risks related to undocumented workers. "The law allows undocumented workers to sue for 'pain and suffering' in relation to their job termination and likely deportation, and there are instances where the former employee who has not filed tax returns can sue for future lost wages—even if they lack a Social Security number or have a false Social Security number," he said. "If the undocumented worker is 20 years old, the household employer could be on the hook for an additional 40 years of unpaid wages."

## Au Pairs

Many families have engaged a young foreign person to live in the home and take care of children and light chores in exchange for room and board and modest wages. While Au Pairs have been a viable option for managing household costs in the past, families need to be more careful about the practice in the future. They would be wise to consult with their advisor team about the implications of an ongoing class action suit demanding back pay and punitive damages on behalf of thousands of current and former Au Pairs.<sup>3</sup>

## Lawsuits

Several highly publicized "nannygate" lawsuits illustrate the risk of lawsuits claiming violations of labor law. In one case, the former nanny alleged she was sexually harassed and then assaulted because she protested the sexual harassment.<sup>4</sup> In another case, the nanny sued for wrongful termination based on discrimination grounds, alleging the employer insulted her race.<sup>5</sup> In yet another, the former nanny alleged her employer had prohibited her from leaving the room of the child during 12-hour shifts, with no breaks or overtime.<sup>6</sup> The families vociferously denied the charges and in some instances filed countersuits or settled the cases.



Then, there is the extraordinary case of the live-in nanny who received wide-scale publicity for refusing to leave the home of her employers after her job was terminated (although in some reports the nanny said she had ended her own employment). The former nanny alleged that the family had placed increasing and excessive demands on her time that were beyond the scope of the job description. She finally left the home after several months had elapsed. No lawsuits were filed but the story went viral, shedding light on this potential risk.<sup>7</sup>

In fact, physically moving out a caregiver who lives in the home or restraining the domestic employee from returning to the home is difficult under the law, according to McDonough.

“The old expression—‘possession is nine-tenths of the law’—has some substance here,” McDonough explained. “The nanny in this case has what is known as a ‘possessory right’ to be living there, even if she did not pay rent. Under property law, the courts generally would perceive the living quarters as part of her compensation. You must undertake a formal process to remove the person, much like when a landlord seeks to evict a tenant who is not paying rent.”

By improperly terminating the employment of household staff, HNW families risk a range of lawsuits alleging sexual harassment, discrimination, and retaliation, among others. Aware that the family is about to terminate employment, a domestic employee may also fake an injury and sue the employer for medical expenses and lost wages.

“There are a million ways families are at risk of these claims,” McDonough said. “There are absurd examples, where a maid slips on a wet kitchen floor and sues, alleging poor lighting. It’s a monster that is fueled by the headlines of the day.”

Sexual harassment claims are a prime example. “A domestic worker knows he or she will be fired, knows they haven’t done a decent job, or sees others being laid off because the household is shrinking, and then fabricates a story that the employer made advances of an inappropriate nature,” McDonough said. “The allegation is enough to cause reputational damage.”

Unlike large companies, families do not have an HR department to intermedicate when difficulties arise between the employer and employee. “I’ve seen situations where a household employee has sued after being terminated, claiming that family behavior most people would find innocuous was offensive to the employee’s cultural sensibilities,” said Evan Jehle, partner at FFO, a New York-based business management company serving ultra-wealthy families. “A smart HR professional in a company would ensure this type of behavior did not occur at the workplace. At home, which is a more casual environment, it can become a problem.”

### **Employee Injury**

There is also the risk of worker injury on the job and not having workers compensation coverage when required. About half of the states in the U.S. mandate families to carry workers compensation under certain conditions. The requirements vary and can depend on the hours worked, wages paid, and number of staff employed. Appendix I lists state-by-state information.

Carriers such as ACE that specialize in a high net worth clientele often provide access to professional background screening services on a complimentary or reduced-fee basis.

Failing to buy and maintain workers compensation insurance when required can result in severe fines. “The penalties are not always straight damages—you can incur double, triple and quadruple penalties for not carrying workers compensation, depending on the state,” said McDonough. In New York State, for instance, an employer can be liable for a penalty of \$2,000 each day of noncompliance, in addition to the costs of providing the actual award to the injured employee—both wages and medical costs. The latter can easily exceed hundreds of thousands of dollars.<sup>8</sup>

In the states where workers compensation is not required, the employee can still pursue workers compensation benefits. The family could be forced to pay for the benefits out of their own pocket if they did not have the coverage.

### Identity and Property Theft

Theft is one of the most common crimes committed by dishonest household employees, and the risk increases if they work without day-to-day supervision.

#### Identity Theft

Hackers go to great lengths to acquire personally identifiable information from business and home computer systems. By contrast, a domestic employee can simply walk into the home office and open a file drawer for this information, or look over the shoulder of a family member while he or she is typing a password into a computer.

Pre-approved credit card offers that arrive in the mail also offer an easy path to fraud. “Most HNW families don’t want the cards, but there is the risk that a domestic employee regularly bringing in the mail will see it and use it illegally,” said Mark Perkins, president of ID Resolution, an identity theft management and advisory firm.

These risks extend beyond illegal credit card purchases to health insurance fraud. “Many domestic workers do not have health insurance, making the family’s health insurance a tempting target,” said Nick Williams, ID Resolution CEO. “We’ve handled several situations where the employee steals the family’s health insurance information and uses it for their own purposes.”

Both experts also note a rise in the frequency of children having their identity stolen. This type of theft is much easier for someone in the home to perpetrate, because children are even more trusting of domestic staff than their parents and therefore are more likely to be victimized.

“As an extreme example, we had a situation with a nine-year-old child who went bankrupt with more than half a million dollars in debt,” said Williams. “The employee had access to the child’s Social Security number and then assumed her identity.”

#### Property Theft

The homes of HNW families typically contain valuable pieces of jewelry, fine art objects, expensive clothing, and state-of-the-art

### Tips to Minimize Unauthorized Use of Spending Accounts

- Minimize the number of credit/debit cards used by the household.
- When practical, issue prepaid debit cards instead of credit/debit cards to employees.
- At least once a month, review all purchases and returns on each card and match to receipts collected from employees.
- Do not have employees use their own credit cards for household purchases.
- Place sensitive personal and financial information in a secure area or safe.
- Do not open up store accounts that employees can ‘sign off’ on for purchases.

electronic equipment. Suddenly, a necklace is missing, and an unknown member of the household staff is suspected as the perpetrator. In families with multiple domestic employees, ferreting out who may have stolen the necklace is difficult and unsettling, as an investigation will create feelings among innocent employees that the employer does not trust them.

Such thefts are usually confined to a little pilfering here and there. But they can become more serious.

Brian Valenza, president of The Guidry Group, cited a recent case. “We were hired by a HNW family to investigate the theft of the wife’s jewelry,” he recalled. “She had come home and discovered that her bedroom had been ransacked. Meanwhile, the housekeeper was gone. By the time she had filed a report and we were brought in to investigate, the employee had fled the country.”

“Turned out she was wanted by Interpol as a member of a crime ring,” Valenza said. “Unfortunately, the family had failed to conduct a substantive background criminal check.”

What would explain this lack of due diligence? Unquestioning trust and self-confidence appear to be the answers. Challenging this mindset requires a sensitive approach.

“When we present our services to our affluent clientele, it is our job to identify the immediate risk areas; however, the way we communicate how to change the identified areas of risk is something altogether different (e.g., your nanny should not have three credit cards in your name; or your housekeeper’s five children should not have access to the pool while you are away). In effect, I am telling the family they made a poor decision and did something wrong. That message is hard for them to accept, so the immediate threat is often overlooked. My job is to lower the risk by improving employment protocol, while allowing the family to feel empowered by better decisions.”

### **Personal Physical Danger**

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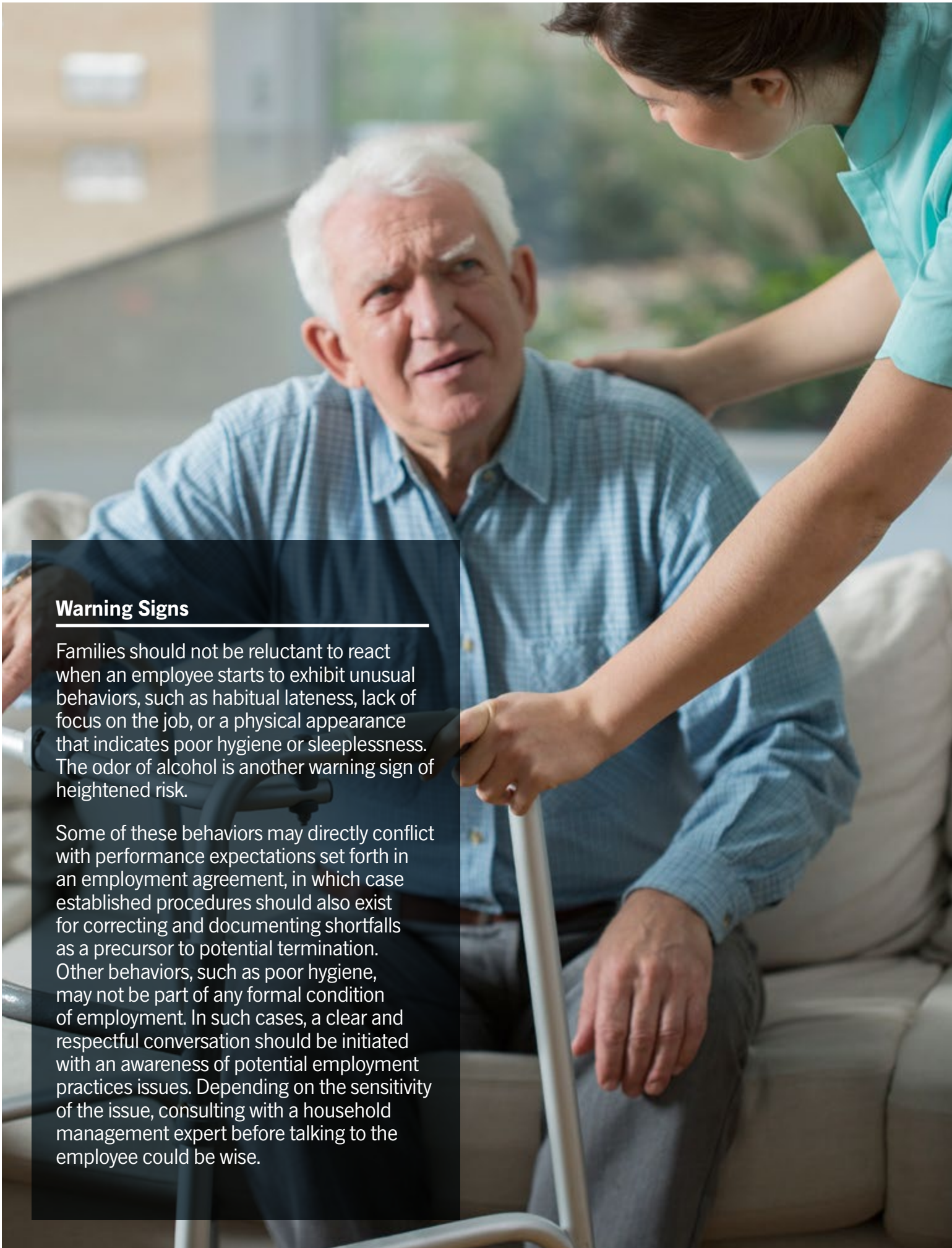
Monetary loss is one threat, but the possibility that a domestic employee might physically endanger or harm a child, elderly parent, or spouse remains the most distressing risk confronting HNW families. Instances abound where hidden cameras reveal that a nanny who acts in a kind manner in front of parents mistreats the children when the parents leave.

Valenza from The Guidry Group cited another dreadful but much rarer scenario—kidnapping of children to reap large ransom rewards from their families. “While a criminal does not need to be close to a HNW family to perpetrate a kidnap and extortion scheme, the crime becomes easier when the perpetrators have easy access to children and know their routines,” he said.

When a domestic employee’s job involves driving, such as taking the kids to school, the risk of injury due to a vehicular accident becomes a concern. Yet, it is not uncommon for families to entrust employees with driving responsibilities—without checking their driver’s license or driving record. If the caregiver is driving his or her own car on family business, families should also consider the condition of the car and whether or not it has operable airbags and secure car seats.

Significant automobile liability issues may also arise. “If the nanny is driving her or his own car on behalf of the family and she or he then gets into an accident that causes injuries to third parties, the injured parties will likely sue the family, based on perception that the family has the deeper pockets,” Jehle said.





## **Warning Signs**

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Families should not be reluctant to react when an employee starts to exhibit unusual behaviors, such as habitual lateness, lack of focus on the job, or a physical appearance that indicates poor hygiene or sleeplessness. The odor of alcohol is another warning sign of heightened risk.

Some of these behaviors may directly conflict with performance expectations set forth in an employment agreement, in which case established procedures should also exist for correcting and documenting shortfalls as a precursor to potential termination. Other behaviors, such as poor hygiene, may not be part of any formal condition of employment. In such cases, a clear and respectful conversation should be initiated with an awareness of potential employment practices issues. Depending on the sensitivity of the issue, consulting with a household management expert before talking to the employee could be wise.



# PART II: COMMON HIRING MISTAKES

Many of the risks cited in this report can be eliminated or mitigated by following proper hiring protocols. Unfortunately, too many HNW families disregard these best practices.

Why do otherwise successful people who rigorously assess job candidates in a business context fail to pursue the same hiring standards with domestic employees? There is no easy answer. Leigh said some families that have suddenly come into great wealth begin buying larger homes that require more domestic staff. “Now that they have three or four houses, they need people to care for them in very personal ways,” she added. “These needs tend to make them lower their guard.”

## Relying on Recommendations Alone

When their guard is lowered, HNW families often hire a domestic employee based on the recommendations of a friend or current household worker. “The nanny will say my sister is looking for work as a cook, and she is such a great cook,” Valenza said. “The family loves and trusts the nanny so much they decide not to do a background check. Then, the cook is found to be stealing from the family and a post-employment background criminal inquiry reveals she has a history of such crimes. It happens more than you would imagine.”

Careless use of social media can also cause families to forgo due diligence. “There are situations where wealthy individuals inadvertently let someone follow them on a social media site like LinkedIn,” said Jehle. “The follower then sees who else is following the affluent individual. They then apply for work as a household employee and provide a fictitious reference letter from one of the other followers. The letter commends the person for his or her fine service as that family’s nanny or cook the past ten years.”

## Inadequate Background Checks

Many families simply trust that the employment agency they retained to find qualified household workers performed the necessary activities for a background check. But, not all agencies provide such intensive background checks, “using cursory due diligence at best,” said Valenza.

“We cover everything that needs to be covered, looking at civil litigation and criminal records at the state, county, and federal levels,” Valenza explained. “We search out bankruptcy filings, lien judgments and also examine the person’s lifestyle to discern if they’re under financial pressure. ... If you’re worth tens of millions of dollars, you want to seriously weigh the pros and cons of hiring someone who filed for personal bankruptcy six months ago.”

The need for thorough checks is affirmed by several studies. According to the 2013 ADP Annual Screening Index, 41 percent of employment, education and/or credential reference checks revealed a difference of information between what the applicant provided and what the source reported. Nearly two-thirds (63 percent) of all job applicants in another study by HireRight say they have stretched the truth at least once in an effort to land a job. As previously mentioned, a third of the applicants for domestic staff positions investigated by the Guidry Group had an unfavorable or even dangerous background.

Another mistake is the failure to establish a routine for conducting background checks on employees on a regular basis. For example, imagine a head gardener who passed the most stringent review at the time of employment, but recently suffered a financial setback that has left him deeply in debt, depressed, and drinking. The risk of him stealing from the family or possibly harming its members has increased exponentially. A periodic credit check that is part of an employment agreement would illuminate the person’s financial problems to direct a frank discussion.

“We always recommend that HNW clients conduct an initial background check and subsequent checks at set intervals for all employees going forward—perhaps every three to five years,” said Valenza. HNW clients of ACE Private Risk Services are offered these services from The Guidry Group on a complimentary or reduced-fee basis, depending on their account premium.

## A Job for Professionals

Conducting a meticulous background check is imperative. Only recognized professional firms should be engaged to assure both thoroughness and regulatory compliance.

Similar prudence must be accorded the use of hidden cameras in the home and in automobiles, as the law is intricate on this subject. Appendix II provides more information.

# PART III: BEST-IN-CLASS HIRING PRACTICES

To achieve the goal of a long-lasting and safe relationship between family members and employees, families should follow the same rigorous hiring and management procedures that are used in the business world. Considering the complexity and potential pitfalls of achieving that goal, families often stand to benefit from the advice and services of a range of experts, including expert household risk advisors, attorneys, accountants, employment agencies, background checking firms, identity theft consultants, and insurance agents.

Some insurers like ACE Private Risk Services have established close relationships with such advisors to ensure that HNW clients receive superior risk management services, in addition to robust insurance protection. ACE will also partner with household employers to evaluate the risks presented by domestic employees and recommend loss prevention and other mitigation plans.

These advisors can help the family implement many of the best hiring and management practices, including:

- **Job description:** The job should be described in written detail, including all responsibilities to be performed by the employee, the work schedule, and the specific requirements of the job, such as international travel or lifting 40 pounds.
- **Required documents and permissions:** The family should collect a resume, references, identifications, and a permission release for a background investigation.
- **Interviews:** The family should use the job description to structure the interview questions regarding the experience of the candidates. They should pay attention to the applicant's demeanor, especially clues that may indicate a personality disorder or character flaw. Instead of "yes/no" questions, the family should ask open-ended questions that reveal how the applicant thinks and communicates. They should not ask about age, religion, race and other topics prohibited by federal law. Appendix III lists specific questions that should and should not be asked.
- **Background checks:** Thorough background checks should be conducted by a professional security firm experienced in working with household employees. The firm should have the ability to investigate criminal and DUI records both out of state and out of the country, as well as any charges without conviction.
- **References:** Families should contact all references via telephone and ask questions that will provide a better understanding of the candidate's moral character and actual work history. Personal conversations reveal more than exchanging emails or text



messages. A good rule is to obtain four professional references and four personal references (other than family members).

- **Signed employment agreement:** When extending an offer, families should have the applicant sign an agreement that clearly outlines:
  - Detailed scope of duties and responsibilities
  - Compensation level and payroll frequency
  - Tax treatment
  - Work schedule and hours
  - Employment requirements, such as maintaining an excellent driving record
- **Employee manual:** Staff should also receive a customized manual to reflect the individual work environment and expectations. At a minimum, it should address:
  - General employment information
  - HR directives and employment policies: e.g., use of prepaid debit cards for work-related duties or parking in a certain spot
  - Payroll documentation
  - Evaluations and performance expectations
  - Causes and procedures for termination
  - Benefits
  - Monitoring in the workplace, if any
  - Non-disclosure agreements

Tracking hours worked deserves special attention, since unpaid overtime represents one of the more popular claims of mistreatment made by disgruntled or ex-employees. Strong practices include posting a set time schedule clearly in the home, having weekly time sheets signed and submitted by employees, and using an expert such as a CPA to manage the payroll and records.

- **Non-disclosure or confidentiality agreement:** The importance of a confidentiality agreement cannot be emphasized enough—especially in these days of social media exposure. Even during interviews, the prospective employee can gather sensitive information about the family. The last thing parents want is a picture of their children on vacation or images from a private event at their home posted on Facebook or Instagram.

What holds true in business agreements holds true in household employment agreements: The more clarity about responsibilities and compensation up front, the fewer surprises or unpleasant endings down the road. Any domestic worker who balks at the details in an offer is probably not the right person for the job.

### Domestic Staff Interviewing Tips

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To hire a long-term employee, Leigh says families should allow a minimum of 120 days to complete the interviewing, testing, and background investigation process. She suggests the following for a successful first interview:

- Schedule candidate interviews outside of the private home and limit the personal information offered to candidates—e.g., names of children if any, schools, place of work, social engagements, and affiliations.
- Instruct candidates to bring a completed handwritten application to the interview.
- Require candidates to present a professional resume and two different formal color copies of photo identifications.
- Require candidates to provide four work references and four personal character references.
- Do not introduce candidates to children before conducting and completing a thorough background investigation.
- Have a trusted friend sit in on the candidate interviews for another opinion.
- Ask all candidates the same questions to make comparisons easier.
- Interview top candidates at least twice.
- During the interview process, have candidates complete a hands-on skills evaluation.
- Call all references before extending an offer to hire.

# PART IV: SECURING PROPER INSURANCE

Even the best household management practices cannot completely eliminate all the risks involved in employing domestic staff. Insurance, therefore, plays a critical role in protecting the family from financial loss. Care must be taken in structuring the insurance program because not all insurance policies are alike, especially for situations involving domestic employee risks in HNW households. The following sections describe what to seek to ensure optimal insurance coverage.

## Employment Practices Liability Insurance

Employment practices liability insurance (EPLI) protects families when an employee sues for a wrongful employment act, such as wrongful termination, discrimination, harassment, and sexual harassment. The coverage absorbs both the compensatory damages and the defense costs involved in defending the claim. Depending on the carrier, EPLI may be sold as a standalone policy or as an endorsement to an umbrella liability policy.

Since plaintiffs alleging sexual harassment often threaten to go public with their allegations as a way to pressure a quick settlement, families should check that the EPLI policy, or the umbrella policy that it is part of, includes coverage for the services of a public relations firm. ACE Private Risk Services offers EPLI as an endorsement to the umbrella liability policy that already includes reputation defense coverage.

Limits of coverage are typically \$250,000 or \$500,000 per occurrence, with total losses covered limited to \$500,000 in a single year. The cost can range from \$600 to \$1,000 for the first five employees, depending on the amount of coverage. Each additional employee over the first five can cost \$200 to \$400, also depending on the amount of coverage.

## Workers Compensation Insurance

Workers compensation insurance covers medical treatment, lost wages, rehabilitation, retraining, compensation for permanent injuries, survivor benefits, and other damages resulting from job-related injuries, illness, or death. Coverage may be denied if the injuries were self-inflicted or sustained while a worker was committing a serious crime or otherwise violating employer policy. About half of U.S. states have mandatory requirements to purchase workers compensation insurance.

Importantly, when a state does not mandate workers compensation coverage, it does not mean that the coverage is unnecessary. In all states, employees can seek workers compensation benefits due to



on-the-job injuries. The purpose of workers compensation laws are to ensure that an employee who suffers a job-related injury or illness receives fixed monetary awards without having to sue his or her employer. “Workers compensation is simply the best money a HNW family with domestic staff can spend,” Leigh said.

### Homeowners and Valuables Insurance

Homeowners policies provide limited coverages that apply to domestic staff risks. Certainly, they cover property theft. But a standard policy might only pay for the actual cash value of a stolen item by applying depreciation, unless a special endorsement has been added for additional premium. A policy from a HNW carrier typically provides replacement cost coverage, which does not apply depreciation.

Standard policies also include low coverage limits for many of the items most likely to be stolen—jewelry, silverware, stamp and coin collections, furs, cash, firearms, etc. The limit could be \$1,000 for stolen jewelry or \$200 for stolen cash. Policies from HNW insurance companies usually have much higher limits, such as \$10,000 for jewelry.

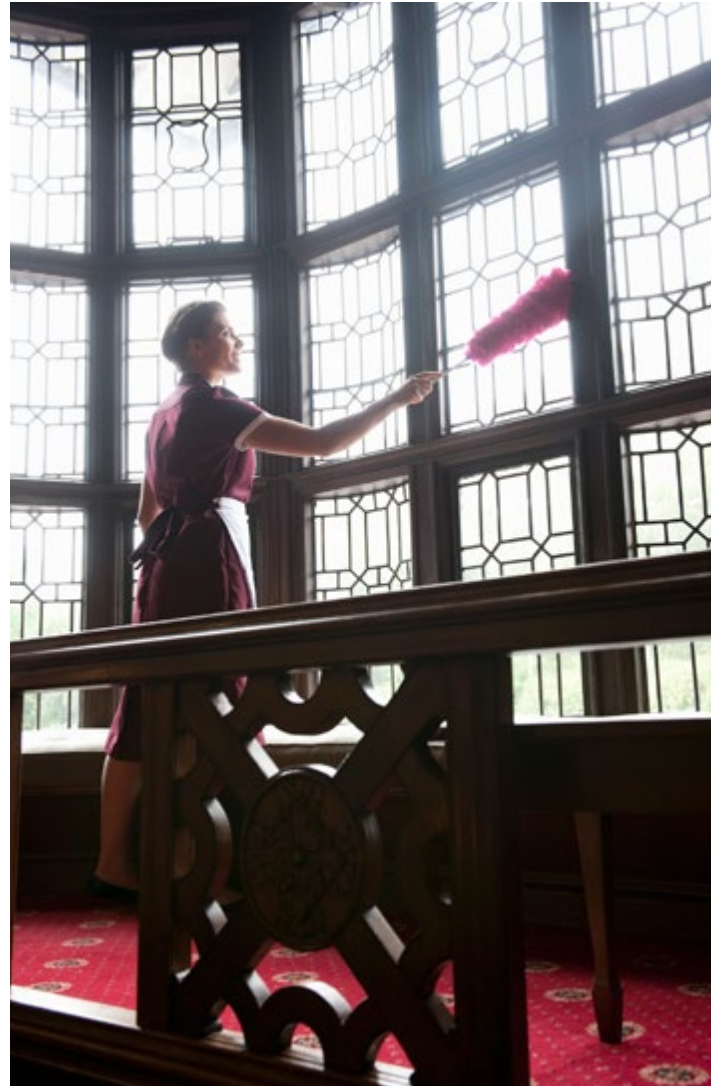
The most valuable items should also be scheduled on a valuables policy for additional protection. Here again, differences between standard and HNW policies exist. For instance, a standard policy will not pay more than the value listed on the policy for the scheduled item. Sometimes, it will pay less if the actual cash value has fallen. By contrast, a valuables policy from a HNW insurance company usually treats the scheduled amount as the minimum. Moreover, if the market value of the stolen item recently increased, the policies will typically pay up to 150 percent of the scheduled amount.

Unlike the industry standard, homeowner policies geared to HNW families often include coverage for identity fraud expenses, unauthorized use of credit and debit cards, and forged checks. The policy from ACE Private Risk Services even includes coverage for unauthorized use of home computers for online banking.

In the case of a kidnapping, policies from a HNW carrier will cover lost income due to the family taking time off to assist authorities and legal counsel, reasonable attorney fees, and certain other expenses related to recovering the kidnapped individual. Coverage for any ransom payment, however, requires a separate specialized policy.

### Automobile Insurance

The family’s auto insurance policy generally acts as the primary coverage if the worker is driving a family-owned vehicle. The policy would cover bodily injury and property damage to others involved in the accident caused by the employee. If the employee drives a family vehicle on a regular basis, it is a good idea to have him or her named as a driver on the policy. This practice allows the insurance company to check the employee’s driving record and catch a cause for concern, such as a pattern of speeding tickets.



If the employee is driving his or her car for a job-related task, the employee’s auto insurance policy typically acts as the primary coverage. Families should check that the employee has adequate coverage in such cases. They should be aware that minimum requirements set by the state can be as low as \$10,000, not nearly enough to cover incidents involving serious injury or property damage. Once that coverage has been exhausted, the injured parties could potentially name the family in the lawsuit, claiming the employee was acting as an agent for the family.

### Umbrella Liability Insurance

Umbrella liability coverage is a critical component of a family’s total wealth protection plan, especially when the family employs domestic staff. Accidents involving a serious injury can far exceed the liability coverage in a homeowner or auto policy. Those policies rarely offer more than \$500,000 in liability coverage, but jury awards and settlements for injuries involving brain and spinal damage can be \$10 million or more. Umbrella liability coverage protects families against these extreme cases by providing coverage over and above the underlying homeowner and auto policies.

In the case of domestic employees, the scenario in which umbrella liability coverage would most likely be a factor occurs when the employee drives the family auto and causes a serious accident in which other parties are severely injured.

Coverages within an umbrella policy vary widely by carrier. Many standard market carriers will offer no more than \$5 million in coverage, and getting approved for amounts greater than \$2 million can be very difficult. HNW carriers such as ACE Private Risk Services can offer up to \$100 million.

Other benefits financially successful families should seek include:

- **Legal defense:** Once the resources of the underlying policies are exhausted, the umbrella policy should coordinate and pay for the legal defense without reducing the liability limit.
- **Reputation defense:** The policy should provide coverage for the cost of having a public relations firm protect the family's reputation, a key concern when the allegations in the lawsuit become public knowledge.
- **Private consultation:** The umbrella policy should provide coverage for the cost of having the family's lawyer monitor the legal defense efforts and help with administrative tasks.

### Conclusion

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HNW families seeking to make their personal lives easier by employing domestic staff may instead experience increased complexity and risk if they do not follow business-like practices in their hiring and management decisions. To avoid labor law violations

and minimize the risks of liability lawsuits, identity fraud, property theft, and personal physical harm, they should build the right team of experts who can advise them on the best methods for fostering long-lasting and safe relationships between employees and family members. This team could include household risk advisors, attorneys, accountants, employment agencies, background checking firms, and identity theft consultants.

Even when the best hiring and management procedures are used, unfortunate incidents can occur. Therefore, it is always critical to have proper insurance in place. Families should be careful to work with an insurance agent or broker that has access to an insurance company that specializes in serving HNW clients. These companies will be able to offer the range of coverages and services that best protect families who employ domestic staff, such as employment practices liability and workers compensation insurance. Their homeowners, valuables, auto, and umbrella liability policies will also likely include superior coverage related to key risks presented by domestic employees.

### Endnotes

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1. <http://www.dol.gov/WHD/flsa/index.htm>
2. <http://www.uscis.gov/i-9-central/penalties>
3. <http://www.law360.com/articles/645155/au-pair-companies-want-out-of-j-1-visa-wage-fixing-suit>
4. <http://www.huffingtonpost.com/tag/rob-lowe-nanny/>
5. <http://www.cnn.com/2012/05/24/showbiz/sharon-stone-nanny/>
6. <http://www.dailymail.co.uk/tvshowbiz/article-2451561/Alanis-Morissette-puts-lawsuit-nanny-gym.html>
7. <http://abcnews.go.com/US/live-nanny-wouldnt-leave-feels-advantage/story?id=24506318>
8. <http://www.wcb.ny.gov/content/main/Employers/noncompliancePenalty.jsp>



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Teresa Leigh, founder and CEO of Teresa Leigh Household Risk Management, is an award-winning pioneer in the field of household risk management for high net worth families. Due to her nationally recognized expertise in the hiring and management of household property and staff, she is one of the most sought-after speakers on the subject and is frequently featured in publications such as *Worth Magazine*, *Forbes*, and the *New York Times*.

Ms. Leigh's firm serves clients nationwide and has offices in New York, NY, Raleigh, NC, and Palo Alto, CA. The firm specializes in hiring best-in-class staff for households and properties and providing Human Resources, payroll and day-to-day oversight. The company's service profile also includes: state-by-state labor law compliance, assessing and mitigating household risk for affluent families, fiscal oversight, best practices for hiring and retaining staff, and the development and execution of client-specific risk management strategies.

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Ranked among the top law firms in the country, Cozen O'Connor has more than 600 attorneys in 23 cities across two continents. Cozen O'Connor is a full-service firm with nationally recognized practices in litigation, business law, and government relations, and its attorneys have experience operating in all sectors of the economy. Cozen O'Connor's client list includes global Fortune 500 companies, middle-market firms poised for growth, ambitious startups, and high-profile individuals.

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Brian Valenza, president of The Guidry Group, built his security and business background during his career as a Navy S.E.A.L and founding and running Centennial Security Integration. He is known for his well-rounded operational security, business, and systems backgrounds. His efforts have directly resulted in successful rescue missions, the highest level of operational readiness of U.S. Naval Special Warfare units, and the implementation of physical security measures at high-profile private and commercial facilities.

The Guidry Group is an international security and risk mitigation consulting firm that provides innovative protection solutions for high-profile individuals, families, and businesses. Since 1985, The Guidry Group's staff of former U.S. Secret Service and Armed Forces members has operated in 125 countries around the world, assessing threats to their clients' well-being, confidential information, and business operations.

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Headquartered in New York, FFO is the premier family office and business management company serving ultra-wealthy individuals, families and their advisors. FFO solutions bridge financial and lifestyle objectives, allowing clients to more fully enjoy the benefits of exceptional wealth. FFO combines unmatched technical expertise with the highest standards for privacy and discretion, working with dynamic and sophisticated clients including billionaires, entrepreneurs, investment managers, athletes, artists and entertainers.

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Nick Willams, founder and CEO of ID Resolution LLC, has more than 30 years of experience in customer service and management of entrepreneurial solutions. Mark Perkins, president of ID Resolution LLC, also has more than 30 years of experience running and investing in businesses ranging from start-ups to established market leaders. He also is a Certified Fraud Examiner and member of ACFE.

ID Resolution is an innovative, client-focused company that provides a full suite of identity management solutions. Formed by people who were at the forefront of the industry created to combat and deal with identity theft, the company creates and customizes new products and brings new ideas to satisfy its clients' ever-changing needs. Its superior management information and reporting, customer satisfaction testimonials, and seamless transitioning to incorporate new products help client companies build business and increase customer loyalty.

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# APPENDIX I: WORKERS' COMPENSATION REQUIREMENTS FOR DOMESTIC WORKERS BY STATE

## **Alabama** – Voluntary

## **Alaska** – Mandatory

Any domestic worker except part-time babysitters, cleaning persons, harvest help and similar part-time or transient help.

## **Arizona** – Voluntary

## **Arkansas** – Voluntary employees

## **California** – Mandatory

Any domestic worker — including one who cares for and supervises children but excluding domestic service by a parent, spouse, or child of the employer — employed 52 or more hours, or who earned \$100 or more, during 90 calendar days immediately preceding date of injury or last employment exposing such worker to the hazards of an occupational disease.

## **Colorado** – Mandatory

For all domestic workers working 40 hours or more in a week, or working 5 days or more in a week.

## **Connecticut** – Mandatory

Any domestic worker employed 26 hours or more per week by one employer.

## **Delaware** – Mandatory

Any domestic worker who earns \$750 or more in any three month period from a single private home or household.

## **District of Columbia** – Mandatory

Domestic workers employed by the same employer at least 240 hours during a calendar quarter.

## **Florida** – Voluntary

## **Georgia** – Voluntary

## **Hawaii** – Mandatory

Any worker employed solely for personal, family or household purposes whose wages are \$225 or more during the calendar quarter and during each completed calendar quarter of the preceding 12-month period.

## **Idaho** – Voluntary

## **Illinois** – Mandatory

Any worker or workers employed for a total of 40 or more hours per week for a period of 13 or more weeks during a calendar year by any household or residence.

## **Indiana** – Voluntary

## **Iowa** – Mandatory

Any employee working in or about a private dwelling who is not a regular household member, whose earnings are \$1,500 or more during the 12 consecutive months prior to an injury.

## **Kansas** – Mandatory

Any domestic worker if the employer had a total gross annual payroll for the preceding year of \$20,000 or more for all workers.

## **Kentucky** – Mandatory

Two or more domestic workers regularly employed in a private home 40 or more hours a week.

## **Louisiana** – Voluntary

## **Maine** – Voluntary

## **Maryland** – Mandatory

Any domestic worker whose earnings are \$1000 or more in any calendar quarter from a private household. Domestic servants and their employers jointly may elect to cover the employee, even if the individual does not meet the earnings requirement.

## **Massachusetts** – Mandatory

Domestic workers employed 16 or more hours per week by an employer.

## **Michigan** – Mandatory

Any household domestic worker except those employed for less than 35 hours per week for 13 weeks or longer during the preceding 52 weeks.

## **Minnesota** – Mandatory

Domestic workers earning more than \$1,000 in a three-month period during the prior year.

## **Mississippi** – Voluntary

## **Missouri** – Voluntary

## **Montana** – Voluntary



**Nebraska** – Voluntary

**Nevada** – Voluntary

**New Hampshire** – Mandatory

For full-time and part-time domestic staff.

**New Jersey** – Mandatory

For full-time and part-time domestic staff.

**New Mexico** – Voluntary

**New York** – Mandatory

Any domestic worker employed (other than those employed on a farm) by the same employer for a minimum of 40 hours per week.

**North Carolina** – Mandatory for 10+ employees

Covers domestic service if employer employs more than 10 full-time non-seasonal laborers.

**North Dakota** – Voluntary

**Ohio** – Mandatory

For any domestic worker earning \$160 or more in any calendar quarter from one employer.

**Oklahoma** – Mandatory

For any person employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of more than \$10,000 for such workers.

**Oregon** – Voluntary

**Pennsylvania** – Voluntary

**Rhode Island** – Voluntary

**South Carolina** – Mandatory for 4+ employees

Covers domestic service if employer employs four or more employees with a total annual payroll of \$3,000 or more during the previous calendar year.

**South Dakota** – Mandatory

For any domestic worker employed more than 20 hours in any calendar week for more than 6 weeks in any 13-week period.

**Tennessee** – Voluntary

**Texas** – Voluntary

**Utah** – Mandatory

Any domestic worker employed for 40 or more hours per week by the same employer.

**Vermont** – Voluntary

**Virginia** – Voluntary

**Washington** – Mandatory for 2+ employees

Two or more domestic workers if regularly employed in a private home for 40 or more hours per week.

**West Virginia** – Voluntary

**Wisconsin** – Voluntary

**Wyoming** – Voluntary

## APPENDIX II: USE OF VIDEO CAMERAS IN MONITORING THE HOME WORK ENVIRONMENT

Federal and state laws can restrict interception of oral communications without proper consent. In some states, only one party to the conversation may need to consent to the interception. In other states, all parties to the conversation may need to consent. If a homeowner installs a hidden camera with full audio capability and fails to get proper consent, the sound produced in the recording could be illegal and deemed unusable by the court system. Some states (but not all) have ruled that cameras cannot be hidden in private places like a bathroom or dressing room, where a reasonable expectation of privacy exists. John McDonough of Cozen O'Connor advises that an attorney review hidden camera plans prior to their installation.

Images produced by a hidden camera can be vital to the defense of lawsuits alleging wrongful job termination, sexual harassment, discrimination, retaliation and other types of inappropriate workplace conduct. EEOC statistics for all types of employers indicate almost 89,000 allegations of workplace violations in 2014.\*

Not all these charges are legitimate. Some are the consequence of employees who feel their jobs were unjustly terminated. "Once fired, the ex-employee will claim some form of discrimination or sexual harassment, with the latter being the preferred allegation the past five years," McDonough said. "They'll fabricate a story involving acts of an inappropriate nature, then contact an attorney."

Just the allegation of sexual harassment is enough to cause considerable damage to a HNW family's reputation, causing many families to "give into these extortionate demands," McDonough noted. The burden is on the plaintiff to prove the allegations, reinforcing the prudence of installing hidden cameras throughout the home .

\* <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

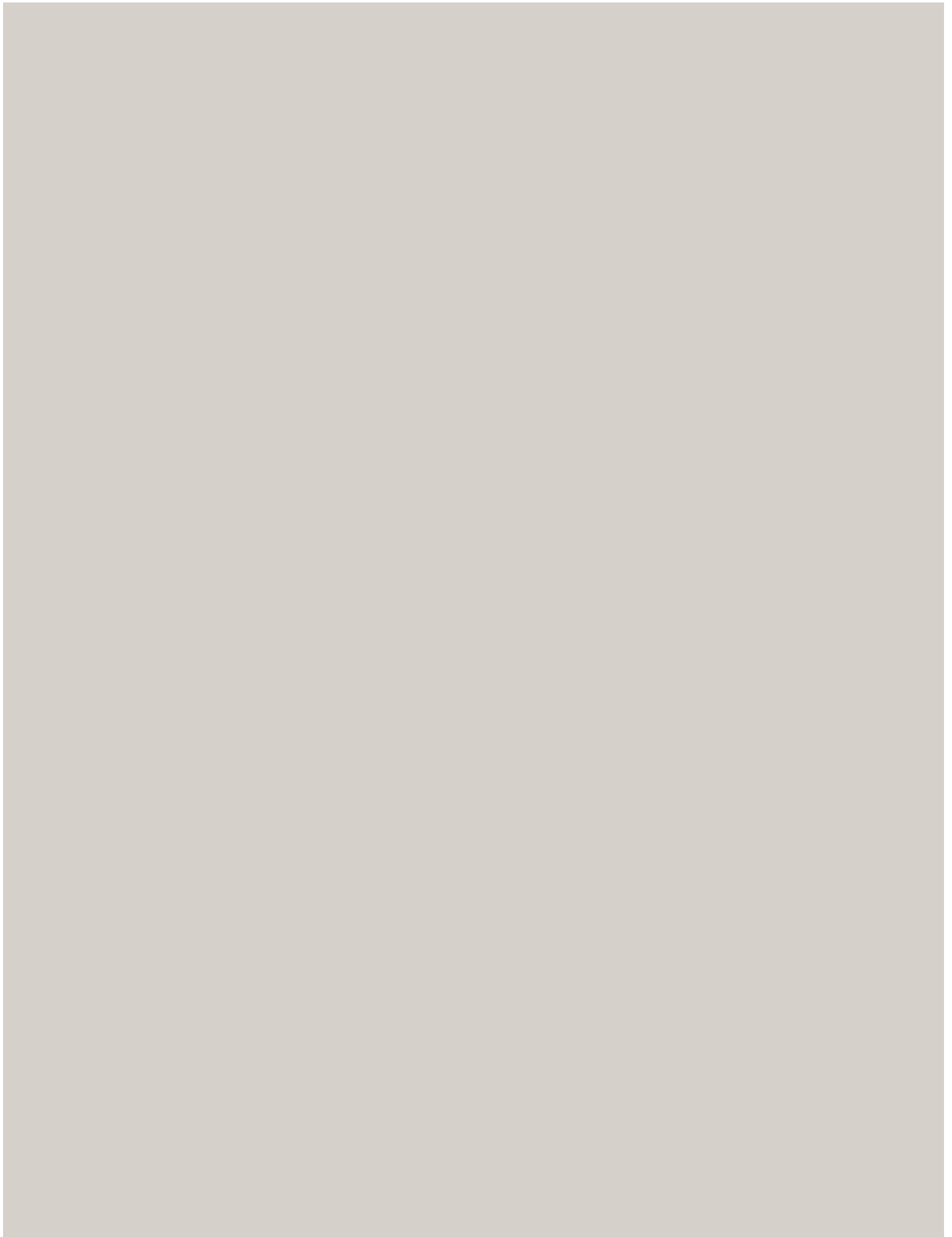
## APPENDIX III: QUESTIONS TO ASK / NOT ASK WHEN INTERVIEWING HOUSEHOLD STAFF CANDIDATES PROVIDED BY TERESA LEIGH HOUSEHOLD RISK MANAGEMENT

### Questions to Ask in an Employment Interview

1. Tell me about yourself.
2. What is your greatest strength?
3. What is your greatest weakness?
4. How do you problem solve?
5. Tell me about your last position.
6. What did you like most about the position? Least?
7. Tell me about your last employer.
8. What did you like most about the employer? Least?
9. Do you have reliable transportation to and from work?
10. What is something you are most proud of?
11. What interests you most in this position?
12. How would you describe yourself?

### Questions NOT to Ask in an Employment Interview

1. How old are you?
2. What church do you attend?
3. What country are you from?
4. What is your birthday?
5. Are you a U.S. Citizen?
6. What religious holidays do you observe?
7. Do you have or plan to have children?
8. When will you retire?
9. Do you smoke or drink?
10. Do you have any disabilities?



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Important Notice: This white paper contains only a general description of the insurance coverages provided by the ACE Platinum Portfolio. Coverage terms are subject to change and can vary by state.

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